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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF LOS ANGELES

14 Civil Action No.

15 DANA J. TOMARKEN, an individual,

16 Plaintiff,

17 vs.

18 NATIONAL ACADEMY OF RECORDING
ARTS & SCIENCES, INC., a Delaware
19 corporation;
MUSICARES FOUNDATION, INC., a
20 Delaware corporation;
GRAMMY MUSEUM FOUNDATION, INC.,
21 a California nonprofit corporation;
GRAMMY FOUNDATION, INC., a
22 California nonprofit corporation; and
DOES 1-10, Inclusive.

23 Defendants.
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COMPLAINT FOR DAMAGES:

1. **VIOLATION OF LABOR CODE
SECTION 1102.5**
2. **WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY
(TAMENY CLAIM)**
3. **DISCRIMINATION BASED ON SEX
IN VIOLATION OF FEHA [Govt.
Code Section 12940 *et seq.*]**
4. **DISCRIMINATION BASED ON AGE
IN VIOLATION OF FEHA [Govt.
Code Section 12940 *et seq.*]**
5. **UNLAWFUL RETALIATION IN
VIOLATION OF FEHA [Govt. Code
Section 12940(h)]**
6. **FAILURE TO PREVENT
RETALIATION AND
DISCRIMINATION [Govt. Code
Section 12940(k)]**

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**7. INTENTIONAL INFLECTION OF
EMOTIONAL DISTRESS**

Trial Date: None Set

DEMAND FOR JURY TRIAL

1 Plaintiff DANA J. TOMARKEN (hereinafter “Ms. Tomarken” or “Plaintiff”) alleges the
2 following against THE NATIONAL ACADEMY OF RECORDING ARTS & SCIENCES, INC.,
3 (hereinafter “Recording Academy” or “Academy”) MUSICARES FOUNDATION, INC.,
4 (hereinafter “MusiCares”) GRAMMY FOUNDATION, INC., and GRAMMY MUSEUM
5 FOUNDATION, INC. (both hereinafter “Grammy Foundation”) (hereinafter collectively referred
6 to as “Defendants”).

7 **NATURE OF ACTION**

8 1. This complaint arises from the efforts of Recording Academy leadership to cover
9 up misconduct and hide its abuse of MusiCares by exploiting a hostile and discriminatory
10 workplace culture to retaliate against Plaintiff, a 75-year-old woman who had ably served
11 MusiCares for 25 years.

12 2. Neil Portnow led this misconduct. He served simultaneously as the president and
13 chief executive officer of both the Academy and MusiCares. He abused his position of trust and
14 violated his fiduciary duty by, among other things, using MusiCares as a bargaining chip in
15 Grammy Awards telecast negotiations to promote the Recording Academy’s interests over those
16 of MusiCares. To benefit the Academy’s telecast, Mr. Portnow bound MusiCares to agreements
17 that, for example, caused Musicares financial and reputational harm by compromising its signature
18 fundraising event, Person of the Year. Ms. Tomarken, who oversaw all aspects of Person of the
19 Year, witnessed Mr. Portnow’s harmful business decisions and tried to mitigate their impact.
20 Despite her best efforts, MusiCares suffered a substantial decline in fundraising because of Mr.
21 Portnow’s conflicts of interest and misconduct, including his withholding material information
22 from Ms. Tomarken and the MusiCares board of directors.

23 3. More specifically, the 2018 Person of the Year tribute yielded a decline in net
24 revenue to numbers not seen since 2002. For example, in 2017, MusiCares netted over \$5 million
25 in revenue; but, as a result of Mr. Portnow’s actions, MusiCares was barely able to net \$1 million
26 in 2018. Mr. Portnow came under heavy public criticism because the Grammys telecast also
27 suffered significant financial losses. He exacerbated the criticism by making inappropriate public
28 comments at the awards show suggesting that female professionals in the music industry needed to

1 “step up” if they wanted the Grammys to honor more women with awards and feature more
2 women in the telecast. Mr. Portnow justifiably feared that his career with the Academy and
3 MusiCares was in jeopardy as a result of all the criticism.

4 4. In the midst of these events, Ms. Tomarken told Mr. Portnow that she would be
5 making a report to MusiCares board members regarding the 2018 Person of the Year financial
6 results. Mr. Portnow feared that Ms. Tomarken’s report would reveal his misconduct and abuse of
7 trust by shedding light on the underlying business decisions he had made to benefit the Academy’s
8 Grammys telecast to MusiCares’ detriment. Consequently, Mr. Portnow refused to allow Ms.
9 Tomarken to make her report to the board.

10 5. At the same time, Mr. Portnow also set about to exploit a culture at the Academy
11 and MusiCares that was hostile and discriminatory to women like Ms. Tomarken in order to rid
12 himself of the threat she posed. As part of this plan, Mr. Portnow enlisted Gaetano Frizzi, chief of
13 the Academy’s human resources department, and one of a group of men that was extremely loyal
14 to Mr. Portnow. Mr. Frizzi, who had previously been hostile to Ms. Tomarken because of her age
15 and gender, became aware of an outstanding pledge that Ms. Tomarken had made in 2017 and
16 used that pledge as a pretext to orchestrate Ms. Tomarken’s termination. Even though Ms.
17 Tomarken immediately affirmed her obligation to pay the pledge the first time she was ever
18 reminded of it, Mr. Frizzi used the overdue payment as the basis for a trumped-up investigation
19 and terminated Ms. Tomarken. Mr. Frizzi also wrongfully orchestrated the termination of another
20 colleague who had also witnessed Mr. Portnow’s abuse of MusiCares and the hostile and
21 discriminatory culture at the Academy and MusiCares.

22 6. With Ms. Tomarken gone from MusiCares, the stage was set for Mr. Portnow to
23 present to the Musicares board, as well as the Academy board, his own version of the facts
24 regarding the reasons underlying the poor financial results for Person of the Year 2018 and to
25 cover up his conflicts of interest and violation of his fiduciary duties to MusiCares. Ms.
26 Tomarken’s termination also gave him the chance to protect his career and the hostile,
27 discriminatory culture at the Academy and MusiCares.

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1 **THE PARTIES**

2 7. Plaintiff Dana J. Tomarken is an individual who resided in Los Angeles County,
3 California. Before Ms. Tomarken was wrongfully terminated, she was employed by Defendants,
4 and each of them, for 25 years -- from July 15, 1993, until April 16, 2018. At the time she was
5 terminated, Ms. Tomarken held the title vice president, MusiCares/Grammy Foundation.

6 8. Plaintiff alleges that Defendant THE NATIONAL ACADEMY OF RECORDING
7 ARTS & SCIENCES, INC., is, and at all times herein mentioned was, a corporation authorized
8 and doing business in the State of California, County of Los Angeles. Defendant Recording
9 Academy's principal place of business and corporate headquarters, and where the following
10 actions took place, was and is located in the County of Los Angeles, at 3030 Olympic Blvd., Santa
11 Monica, California 90404.

12 9. Plaintiff alleges that Defendant MUSICARES FOUNDATION, INC., is, and at all
13 times herein mentioned was, a corporation authorized and doing business in the State of
14 California, County of Los Angeles. Defendant MusiCares' principal place of business and
15 corporate headquarters, and where the following actions took place, was and is located in the
16 County of Los Angeles, at 3030 Olympic Blvd., Santa Monica, California 90404.

17 10. Plaintiff alleges that Defendant GRAMMY MUSEUM FOUNDATION, INC., is,
18 and all times herein mentioned was, a corporation formed, authorized and doing business in the
19 State of California, County of Los Angeles. Defendant GRAMMY FOUNDATION, INC. was at
20 all times herein mentioned, a corporation formed, authorized and doing business in the State of
21 California, County of Los Angeles. Plaintiff alleges that both the GRAMMY MUSEUM
22 FOUNDATION, INC. and GRAMMY FOUNDATION, INC. currently operate as GRAMMY
23 MUSEUM FOUNDATION, INC. (collectively referred to herein as "Grammy Foundation").
24 Defendant GRAMMY MUSEUM FOUNDATION, INC. and GRAMMY FOUNDATION, INC.'s
25 principal place of business and corporate headquarters, and where the following actions took
26 place, was and is located in the County of Los Angeles, at 3030 Olympic Blvd., Santa Monica, CA
27 90404.

11. The true names of Defendant Does 1 through 10, inclusive, are presently unknown to Ms. Tomarken, who therefore sues these Defendants by such fictitious names and capacities. Ms. Tomarken will amend this complaint to allege their true identities when ascertained. Ms. Tomarken is informed and believes, and on that basis alleges, each fictitiously named Defendant is responsible in some way for the acts and failures to act herein alleged, and that Ms. Tomarken's injuries as herein alleged were legally caused by the conduct of each such Defendant.

12. Ms. Tomarken is informed and believes, and thereupon alleges that, at all times material herein, each of the Defendants was the agent or employee of, and/or working in concert with, his/her co-Defendants and was acting within the scope of such agency, employment, and/or concerted activity. Ms. Tomarken alleges that to the extent that certain acts or omissions were perpetrated by certain Defendants, the remaining Defendant or Defendants confirmed and ratified said acts and omissions.

13. For purposes of liability, Defendants Recording Academy, MusiCares, and Grammy Foundation are joint employers, integrated enterprises and alter egos of each other, and during all times relevant herein, jointly employed Plaintiff.

14. Whenever and wherever reference is made in this Complaint to any act or failure to act by a Defendant or Defendants, such allegations and references shall also be deemed to mean the acts and failures of each Defendant acting individually, jointly and severally.

15. The Court has subject matter jurisdiction because the potential amount of damages and civil penalties are within the jurisdictional amounts of the Superior Court of California.

16. The Court has personal jurisdiction over the Defendants as they are either residents of the State of California or transact a substantial portion of their business within the State of California. Defendants, and each of them, have transacted extensive business in California related to the subject matter of this action.

VENUE

17. Venue is proper under Government Code Section 12965(b) and Code of Civil Procedure Section 395 in Los Angeles County because it is the County in which Defendants reside, and where a substantial part of the events giving rise to the claims for relief occurred. Sub-

venue is also proper in the Central District pursuant to Los Angeles Superior Court Local Rule 2.0(c).

FACTUAL ALLEGATIONS

Dana Tomarken's Successful 25-year Career and Sterling Reputation with MusiCares

18. Until she was improperly fired to cover up wrongdoing at the Recording Academy, Ms. Tomarken had enjoyed a 25-year award-winning and successful career at MusiCares and the Grammy Foundation. MusiCares and the Grammy Foundation were both nonprofit organizations affiliated with the Recording Academy. MusiCares provided emergency financial assistance for musicians and music industry members who were experiencing hardship through personal health crises, addiction or natural disasters, like Hurricane Katrina. MusiCares' mission was to serve as a safety net of critical assistance for its clients in times of crisis and serious need, thereby supporting the health and welfare of the music community. The Grammy Foundation, which later merged with the Grammy Museum and became the Grammy Museum Foundation, sought to cultivate the understanding, appreciation and advancement of recorded music in American culture.

19. During Ms. Tomarken's tenure, she created fundraising initiatives for MusiCares and the Grammy Foundation that raised over \$100 million to support their important causes. Her efforts included overseeing galas and luncheons; sporting and private events and concerts; sponsored, live, silent and online auctions; giving and public awareness campaigns; sponsorship acquisitions; grassroots outreach efforts; and more. Most significantly, Ms. Tomarken oversaw all aspects of MusiCares' annual signature fundraising event, Person of the Year, a tribute that selected and honored a musician each year for artistic achievement in the music industry and dedication to philanthropy. Musicians who had been honored as Persons of the Year included Aretha Franklin, Bruce Springsteen, Quincy Jones, Stevie Wonder, and Bob Dylan. The tribute occurred every year during "Grammy week," as part of a string of galas just before the annual Grammy Awards ceremony.

20. Ms. Tomarken dedicated her professional career to the MusiCares mission. In the music industry, her character was prized and her reputation was sterling. She was the face of MusiCares. Those who worked with her knew that her word was her bond and that she would

1 remain committed to any endeavor she undertook through to its completion. In the ten years before
2 she was terminated, Ms. Tomarken nearly doubled MusiCares' revenue. She also received an
3 Emmy award nomination for the 2007 production of Person of the Year honoring musician James
4 Taylor. More recently, in January 2018, the trade magazine Variety honored Ms. Tomarken as one
5 of four women at the Recording Academy responsible for leading initiatives and departments that
6 were "absolutely essential to making" Grammy Week "a success and keeping the 60-year-old
7 Academy running year-round." In sum, Ms. Tomarken was instrumental in MusiCares' record of
8 distributing over \$60 million to more than 125,000 clients in need over its nearly 30-year history.

9 **The Boys' Club at the Recording Academy**

10 21. Despite Ms. Tomarken's success with MusiCares, a sexist culture at the Academy
11 and MusiCares stymied her career. She was also treated worse as she became older. The culture
12 of sexism that pervaded the Academy and MusiCares was evidenced by the "boys' club"
13 surrounding Neil Portnow, the Academy's and MusiCares' president and chief executive officer
14 (CEO) since 2002. The so-called boys' club was a group of men who were deeply loyal to Mr.
15 Portnow, regularly socialized with him, and served as go-tos for anything he needed. Multiple
16 women failed at breaking down the barriers to join this club. Every chief executive at the
17 Academy was male. With the exception of one woman who left in 2008, no female had ever
18 attained the chief executive title in the Academy's or MusiCares' history despite several women's
19 best efforts. Only two women had ever attained the title of senior vice president: one eventually
20 retired after receiving no further promotions and the other departed after her requests to be
21 promoted were repeatedly ignored.

22 22. Ms. Tomarken attained the title of vice president, MusiCares/Grammy Foundation
23 in 2003. Even though she worked tirelessly for MusiCares, garnering record-breaking fundraising
24 success and producing acclaimed, award-winning events, Mr. Portnow refused to promote her to
25 senior vice president and left her in the same position for 15 years. Each year for three years in a
26 row, in 2015, 2016 and 2017, Ms. Tomarken asked Mr. Portnow for a promotion during her
27 annual review. Each year he praised her work and her success and had not a single word of
28 criticism. Yet he still refused to promote her. At her last review in 2017, Mr. Portnow made

1 reference to her age and asked what her plans were. Ms. Tomarken responded that she had no
2 plans yet to retire because she believed there was still good work ahead of her. She said she still
3 had more roads to travel. Mr. Portnow told her that, when she did decide to retire, there would be
4 a retirement package and a diamond ring from Tiffany's waiting for her, along with a celebrated
5 recognition event to honor her accomplishments, just as had been the case for another female
6 former colleague.

7 23. Even though her career was blocked, Ms. Tomarken persevered for several reasons.
8 For one thing, she was good at what she did and believed in her mission to raise money and
9 awareness in support of MusiCares' music industry clients. For another, even if Mr. Portnow
10 refused to promote her within MusiCares, the music industry recognized her success. The Emmy
11 nomination and Variety commendation were just two examples of the public recognition she had
12 received. Ms. Tomarken also persevered because she had the support and appreciation of the
13 MusiCares board of directors. At one point in fact, in or around 2005, Mr. Portnow had attempted
14 to hire a male executive at a higher salary than Ms. Tomarken. The MusiCares board blocked his
15 efforts, however, and Mr. Portnow was forced to match Ms. Tomarken's salary to that of the new
16 male executive. Finally, Ms. Tomarken also persevered because she enjoyed the fellowship and
17 opportunities to advocate on behalf of her female colleagues at MusiCares.

18 24. In later years, Ms. Tomarken experienced increased hostility at the Academy and
19 MusiCares both personally and in connection with the all-female fundraising department she
20 oversaw. The direct hostility she experienced included the actions of Gaetano Frizzi, the chief of
21 human resources for the Academy. He was a loyal member of Mr. Portnow's boys' club, and
22 became increasingly hostile to Ms. Tomarken as she grew older. Mr. Frizzi displayed his hostility
23 toward Ms. Tomarken in one instance by openly criticizing her abilities in a fit of anger while
24 speaking to her subordinate, Dorit Kalev, the managing director of MusiCares. In that
25 conversation, Mr. Frizzi told Ms. Kalev, "It's unfortunate that Dana can't hear;" "It's unfortunate
26 that Dana can't comprehend a conversation;" "It's unfortunate that Dana can't follow directions;"
27 "It's unfortunate that Dana doesn't pay attention;" and "It's really unfortunate that Dana can't
28 manage these simple tasks." Ms. Kalev was shaken enough by Mr. Frizzi's comments that she

1 later described them to Ms. Tomarken, warning her that Mr. Frizzi was biased against her, and
2 told Ms. Tomarken that she no longer felt safe speaking to him or being in his company. Later, as
3 set forth below, Ms. Tomarken encountered Mr. Frizzi's hostility directly during the course of his
4 efforts to oust her and Ms. Kalev.

5 25. Ms. Tomarken's experience of workplace hostility toward women in connection
6 with her department also included the actions of Todd Thorson. He was a male part-time
7 employee that the MusiCares business affairs department sent over to Ms. Tomarken's
8 department to assist with account reconciliation. Mr. Thorson was flippant, rude and
9 condescending to several of the women in the fundraising department; whereas he was polite and
10 professional to other colleagues. Mr. Thorson's behavior toward the women in the fundraising
11 department grew worse every year. By around June 2017, his behavior hampered the fundraising
12 department's productivity so severely that Ms. Kalev met with Ms. Tomarken to try to resolve the
13 situation. Ms. Tomarken and Ms. Kalev agreed that the best course of action was for Ms. Kalev
14 to bring the group's complaints about Mr. Thorson to his supervisor, the head of MusiCares
15 business affairs, since she (Ms. Kalev) was the senior most person who had experienced Mr.
16 Thorson's hostile behavior on an ongoing basis. In keeping with their plan, Ms. Kalev reported
17 Mr. Thorson's conduct to the head of business affairs and explained that his chronic rude
18 behavior negatively impacted the fundraising department's productivity. Ms. Kalev discussed her
19 concerns at length and the meeting with the head of business affairs lasted well over an hour.
20 Nevertheless, as far as Ms. Tomarken and Ms. Kalev could tell, Ms. Kalev's concerns were never
21 addressed. Mr. Thorson continued to behave in a hostile and discriminatory manner, he was never
22 removed from the fundraising department, and he became more, rather than less, involved with
23 its functions.

24 **The Move to New York of the Grammys and Person of the Year**

25 26. In early 2017, Ms. Tomarken learned that Mr. Portnow had decided to move the
26 2018 Grammy Awards to Manhattan's Madison Square Gardens (MSG) from its home in Los
27 Angeles for the last 14 years. This meant that Person of the Year would also have to move from its
28 home at the Los Angeles Convention Center to New York to be near the Grammy Awards. The

1 move for Person of the Year, not to mention the Grammys, was a significant challenge. Over the
2 previous 14 years, relationships and systems had naturally developed year over year at the
3 Convention Center that lent to a nearly flawless execution of the tribute event well within its fiscal
4 budget.

5 27. In June 2017, Ms. Tomarken and colleagues from the MusiCares fundraising
6 department, including Ms. Kalev, traveled to New York to find a venue for Person of the Year and
7 negotiate the deal terms. Brooklyn's Barclays Center quickly emerged as the top contender. In
8 addition to a musical performance, Person of the Year also included a silent auction and gala
9 dinner. Barclays rendered plans to create a platform on top of a lower seating bowl that would
10 provide enough floor space for 250 to 300 banquet tables, which could be sold to corporate
11 partners, as well as multiple stages and a large silent-auction space. A tribute at the Barclays
12 facility would thus allow MusiCares to stay true to its prestigious gala dinner and silent auction
13 model. On top of that, Barclays also offered to waive the rent for the night, to share suite revenue
14 with MusiCares, and to connect the charity's sponsorship team with Barclays' owner's sponsor
15 network for its concerts, events and Brooklyn Nets division.

16 28. In the midst of her negotiations in New York with Barclays, Ms. Tomarken
17 received a call from Irving Azoff, chairman and CEO of Azoff MSG Entertainment, which was a
18 joint venture owned by Mr. Azoff and MSG. He told Ms. Tomarken that Mr. Portnow and MSG
19 had early on in their Grammy negotiations agreed that the Person of the Year tribute would be
20 held only in Manhattan and that it could not be at Barclays. Ms. Tomarken was stunned. Neither
21 she nor anyone on the MusiCares staff had ever been notified of these discussions or the
22 agreement. The MusiCares board had also never been consulted. Mr. Azoff instructed Ms.
23 Tomarken to terminate her discussions with Barclays immediately and advised that she begin
24 discussions with Radio City Music Hall, an MSG venue. Unbeknownst to Ms. Tomarken and her
25 staff, Radio City was already holding a date for Person of the Year.

26 29. What Tomarken did not know was that, back in April 2017, Joel Fisher, a vice
27 president at MSG in New York, had sent an email to Recording Academy executive Brandon
28 Chapman, with whom he was negotiating the contract for the 2018 Grammy Awards. The email

1 stated: "When we went into this, we said no events could be at Barclays." MSG and AEG were
2 longstanding rivals in the live-entertainment business and Barclays was an AEG facility. Fisher
3 threatened it would "kill the entire deal" for MSG to host the Grammys telecast if its rival, the
4 Barclays Center, hosted the Person of the Year event two nights before the awards. He signed off:
5 "Please confirm no Barclays. Thanks." Even though the Radio City deal was at least twice as
6 expensive as the Barclays Center offer, not including the additional financial support the potential
7 Barclays sponsorships would have garnered, Tomarken was forced to terminate negotiations with
8 Barclays.

9 30. Radio City's event space was not configured to host MusiCares' traditional gala
10 dinner, but Ms. Tomarken and her staff could find no better options in Manhattan. Even so she
11 held off on signing the agreement with Radio City as long as possible. The deal terms that Radio
12 City offered were so costly and unacceptable to Ms. Tomarken that she continued to hold off
13 signing in an effort to secure Radio City's agreement to cut expenses or make significant
14 contributions to the tribute event. In November, however, Mr. Chapman announced in a senior
15 staff meeting that MSG would not sign the Grammys telecast deal unless Ms. Tomarken signed
16 the agreement with Radio City; whereupon, Mr. Portnow instructed Ms. Tomarken to sign the
17 agreement with Radio City without any further delay. At this point, Ms. Tomarken's hands were
18 tied. She knew the deal was not in MusiCares' best interest, but she had been instructed by her
19 boss, the CEO of MusiCares, to sign the agreement and believed she had no choice but to follow
20 the instruction. Consequently, the gala dinner experience was sacrificed and plans were put in
21 place to stage a straightforward concert at Radio City, with an anticipated resulting impact on
22 ticket prices and interest in attendance.

23 31. As far as Ms. Tomarken could tell, the future of Person of the Year 2018 was bleak.
24 That summer she began to focus on her mission to salvage it. In or around July 2017, Mr.
25 Chapman contacted Ms. Tomarken and instructed her again on behalf of Mr. Portnow to hold back
26 from selling 300 prime seats to Person of the Year, so that the tickets could be sold at a discounted
27 price in Grammy ticket packages. Without consulting Ms. Tomarken or the MusiCares board, Mr.
28 Portnow had again bound MusiCares in a deal solely to benefit the Recording Academy. This time

1 the deal was with the Oak View Group, an Azoff company that partnered with MSG, and this time
2 it was to sell Grammy Week packages that included tickets to the telecast and Person of the Year.
3 The Recording Academy had never before bound MusiCares in an agreement that required the
4 charity to sell its seats at a discount. Nevertheless, Ms. Tomarken was again forced to relent and
5 accept the terms because Mr. Portnow was her boss and had agreed to cut the deal.

6 32. Ms. Tomarken held the tickets as instructed. Mr. Chapman had assured her that she
7 could expect \$1.2 million in revenue from the package sales for MusiCares, but as the event grew
8 nearer, Ms. Tomarken could not get verification that the tickets had been sold. She was especially
9 concerned because the tickets were for the best seats in the house. Ms. Tomarken repeatedly tried
10 to contact Mr. Portnow and Tim Leiweke, the head of Oak View Group, for an update but neither
11 would return her call. Finally, just before Christmas, another executive at Oak View announced in
12 a weekly senior staff meeting that, back in November, Mr. Portnow had approved dropping
13 MusiCares from the package revenue deal. The costs of holding the Grammys in New York had
14 turned out to be much higher than Mr. Portnow had anticipated. Consequently, he agreed to drop
15 MusiCares from the ticket packages and apply the funds to the Grammys telecast deficit. This was
16 terrible news for Ms. Tomarken and MusiCares. With the looming holidays and barely a month
17 until the event, Tomarken and MusiCares had no time to market and sell the prime seats or
18 somehow make up the lost revenue.

19 33. The Grammy Awards and Person of the Year both suffered serious revenue
20 shortfalls in 2018 in New York. The Grammys experienced an estimated \$6-8 million deficit and
21 Person of the Year projected net revenue of less than \$1 million, as compared to \$5 million the
22 tribute event had earned the previous year in Los Angeles. Mr. Portnow and the Academy came
23 under heavy criticism. To make matters worse, Mr. Portnow and the Academy were also criticized
24 for the lack of female representation in the awards and in the show. (Only one woman had
25 accepted a televised award onstage.) Mr. Portnow added fuel to the fire when he told a reporter
26 after the Grammys show that female artists and executives needed to “step up” if they wanted to
27 be better represented in the music industry. Days later, a publicly circulated petition calling for his
28 resignation received more than 30,000 signatures, while an open letter signed by more than a

1 dozen women executives in the music industry also urged his resignation, saying that Mr. Portnow
2 was part of the problem. To diffuse the growing crisis, the Recording Academy appointed a high-
3 profile task force to improve inclusion at the Grammys and within the Recording Academy. Even
4 so, however, high-ranking male and female music executives wrote additional open letters
5 criticizing the Academy.

6 34. In or around January 2018, Ms. Tomarken learned that the MusiCares business
7 affairs department had asked staff in the MusiCares health and human service department to
8 reduce the amount of financial support for MusiCares clients in need in order to offset the revenue
9 loss from the New York Person of the Year event. Ms. Tomarken vehemently opposed this plan.
10 She immediately went to Mr. Portnow and told him this was the wrong thing to do for several
11 reasons. First, this decision required and had not received approval by the MusiCares board. Ms.
12 Tomarken told Mr. Portnow he could not allow this decision to be carried out unilaterally by
13 MusiCares staff without board approval. Mr. Portnow also could not authorize reducing financial
14 aid to clients because, as MusiCares' president and CEO, he answered to the MusiCares board,
15 which held final authority over the charity. Second, Ms. Tomarken told Mr. Portnow that
16 MusiCares had more than \$5 million specifically earmarked for financial assistance and that
17 MusiCares had to spend this money on its clients instead of reducing their financial support. Ms.
18 Tomarken was especially sensitive to this issue because MusiCares had previously been the
19 subject of a Pulitzer Prize-winning investigative piece in connection with MusiCares' failure to
20 disburse funds to clients in need. Mr. Portnow relented and agreed to speak to the MusiCares
21 business affairs department about these decisions.

22 35. Ms. Tomarken also began pressuring Mr. Portnow to allow her to share Person of
23 the Year's poor financial results with the MusiCares board so that it could take immediate steps to
24 mitigate the effects of the lost revenue, as the numbers in 2018 were nowhere near the numbers of
25 the previous ten years. Mr. Portnow resisted Ms. Tomarken's efforts because he feared her report
26 to the board would lay bare his abuse of MusiCares by using it as a bargaining chip for the
27 Grammys, his violation of his duty of loyalty to MusiCares, and the conflict of interest he
28 exploited as the head of both the Academy and MusiCares by binding MusiCares to agreements

1 that would benefit the Grammys to the detriment of MusiCares. Mr. Portnow forbade Ms.
2 Tomarken from speaking to the MusiCares board about the tribute event's financial results unless
3 he was also present and then refused to make himself available for any such meeting. Ms.
4 Tomarken tried several times to schedule a call with MusiCares board members, Mr. Portnow and
5 herself, but Mr. Portnow claimed each time that he was unavailable. Because Ms. Tomarken
6 urgently wanted to share the results, she asked Mr. Portnow to let her speak to the MusiCares
7 board members on her own since his schedule was full, but he refused.

8 36. Additionally, Mr. Portnow also refused to allow Ms. Tomarken to schedule the
9 MusiCares board's annual meeting by providing her with any available dates, even though the
10 board was required to meet in-person annually before the end of July each year, and it was already
11 March. Mr. Portnow's refusal to allow the MusiCares board meeting to be scheduled also
12 stemmed from the same reasons Mr. Portnow refused to permit Ms. Tomarken to speak to the
13 board about the Person of the Year financial results: Mr. Portnow had already come under a great
14 deal of fire for moving the Grammys to New York and for making inappropriate comments about
15 women after the awards show. He feared Ms. Tomarken's report to the board would also make
16 clear that he had violated his duty to act in MusiCares' best interest and to disclose any conflicts
17 of interest, thereby exacerbating an already precarious situation and jeopardizing his future with
18 both the charity and the Academy.

19 **The Investigation of the Unsold Hotel Certificate**

20 37. In March 2018, around the same time that Ms. Tomarken was having difficult
21 conversations with Mr. Portnow about the reports she needed to make to the MusiCares board,
22 Ms. Tomarken was summoned to a meeting with Mr. Frizzi and a human resources colleague.
23 Mr. Frizzi started the meeting by claiming that an "external audit" had revealed that Ms.
24 Tomarken had approved a fraudulent invoice for Person of the Year the previous year, thereby
25 enabling a third-party vendor to double-bill MusiCares. Ms. Tomarken explained the relevant
26 facts, making clear that the vendor had billed MusiCares only once and properly. Mr. Frizzi's
27 accusation struck Ms. Tomarken as odd because it was so obviously ill-founded -- the vendor had
28 performed the same services for the Person of the Year tribute and submitted a similar invoice

1 every year for more than twenty years. Puzzled, Ms. Tomarken also questioned Mr. Frizzi's
2 representation that there had been an external audit regarding unsold auction items because Ms.
3 Tomarken worked closely with MusiCares' external audit firm Deloitte, and believed the firm
4 would have contacted her to ask any questions. Mr. Frizzi responded by telling her she had a
5 "listening problem" and that it was her "problem" if she could not "accept or comprehend" that
6 there was an external audit.

7 38. As Ms. Tomarken was leaving his office, Mr. Frizzi told her the "external audit"
8 also revealed that she had taken a trip to Portugal using a hotel certificate that had not sold at
9 auction at the 2017 Person of the Year. Unconcerned that she had done anything wrong, Ms.
10 Tomarken forthrightly replied that this was true and that she had made a pledge in connection
11 with the certificate. Mr. Frizzi said he had copies of her MusiCares emails to prove it. Ms.
12 Tomarken said yes, it was all very transparent. Mr. Frizzi then asked Ms. Tomarken if she had
13 paid the pledge. Ms. Tomarken said she believed she had, but that she would need to check her
14 records to confirm. Ms. Tomarken made clear that, in any event, her pledge was still her pledge
15 and she would pay it no matter what. Mr. Frizzi told her to provide proof of the pledge's payment
16 and then launched into a rant that Ms. Tomarken did not listen and could not absorb directions.
17 Ms. Tomarken told him to stop and that they should not engage in personal attacks.

18 39. Ms. Tomarken returned to her office and immediately asked Ms. Kalev to review
19 the department's records to determine if she had paid the pledge. Ms. Kalev reviewed the records
20 and determined there was no record of a payment. Ms. Tomarken asked her to print out a
21 payment authorization form that she could use to pay the pledge if Ms. Tomarken determined,
22 after she went home and checked her records, that the pledge was still outstanding. That evening
23 Ms. Tomarken reviewed her records at home and confirmed that she had not yet paid the pledge.

24 40. The next day, Ms. Tomarken filled out the payment authorization form that Ms.
25 Kalev had printed out for her and brought it along with the donation certificate to Mr. Frizzi.
26 Instead of being satisfied, Mr. Frizzi angrily demanded, "Let me see that!" He then made copies
27 of both documents and gave them back to her. She then walked the payment authorization form
28 to the business affairs department so that it could be processed immediately.

1 41. Ms. Tomarken was unsettled by Mr. Frizzi's hostile treatment. Though she had
2 never intended to be remiss in the payment of her pledge, a late payment was a routine matter in
3 the nonprofit world. The practice with donors had always been to follow up with courteous
4 reminders in an effort to receive the late payment. The meeting with Mr. Frizzi was the first time
5 Ms. Tomarken had been reminded of the outstanding pledge. Though the payment had been due
6 at year end, being a few months late was by no means unprecedented. Past practices dictated that
7 she should be afforded at least one chance to pay it.

8 42. A late payment to MusiCares was also routine at the Recording Academy. In one
9 instance, a counsel to the board of trustees was over a year late to pay a pledge of \$20,000. Ms.
10 Tomarken courteously reminded him until the payment was made. Another counsel to the board
11 of trustees balked at his obligation to pay for a piece of jewelry he had purchased at the Person of
12 the Year auction, even though there was an explicit, written policy that all auction sales were
13 final. Ms. Tomarken politely followed up with him until he agreed to return the item and make a
14 donation instead. In another instance, an Academy executive took nearly a year before she paid
15 for her guest's ticket to Person of the Year. Ms. Tomarken and her staff simply continued to
16 follow up for payment. Another Academy executive seated her guest at the event even though he
17 had no ticket at all. Ms. Tomarken and her staff never resorted to shame or accusations of fraud.

18 43. Mr. Portnow himself often asked to seat guests at Person of the Year without
19 reimbursement to MusiCares. The least expensive ticket cost \$1,750, which was not an
20 insignificant sum, and until the event moved to New York, it regularly sold out every year.

21 44. That Ms. Tomarken forgot to pay the pledge after taking the trip in September 2017
22 was also understandable in light of the losses and setbacks she experienced that fall. In October
23 2017, her longtime partner's mother passed away. In November, her son-in-law tragically took
24 his own life, leaving behind Ms. Tomarken's daughter and two young granddaughters. In
25 December, Ms. Tomarken contracted pneumonia. In all that time, Ms. Tomarken took only four
26 days off, when she was sick with pneumonia. She took no other leave, but instead continued
27 tirelessly to dedicate her efforts to MusiCares and the worthy causes it supported. Ms.
28 Tomarken's dedication to MusiCares was so tireless, in fact, that she had ceased accruing

1 vacation time at this point because she had already accrued the maximum allowed.

2 45. Ms. Tomarken was also surprised at the way Mr. Frizzi handled the matter of the
3 pledge's late payment because she had been transparent about the pledge from the very
4 beginning. This was not a situation in which an unsold auction item had been secreted away to be
5 redeemed and never paid for. Ms. Tomarken made the pledge in her office in front of her staff.
6 When she told her staff the amount she intended to pledge, Ms. Kalev objected and told her the
7 amount was too much. Ms. Kalev believed Ms. Tomarken's pledge was too high because the item
8 was a certificate for a stay in a relatively unknown hotel in Lisbon, Portugal. The certificate had
9 not sold at auction because it included no airfare and had extensive blackout dates, an expiration
10 date, and unknown additional restrictions. Because there was no set policy for the amount Ms.
11 Tomarken should pledge for the hotel stay – only an informal practice – the amount to pledge
12 was within Ms. Tomarken's discretion. Ms. Tomarken could have pledged even some
13 outlandishly small amount and not been in violation of any Academy or MusiCares policy.
14 Instead, she pledged an amount even higher than what she should have paid in accordance with
15 MusiCares' informal practice, which was \$2,100. Ms. Tomarken insisted on pledging \$2,500, and
16 told her staff that, even if she and her partner could not use the certificate, she would pay the
17 pledge as a full donation to MusiCares.

18 46. Ms. Tomarken was entirely transparent and above board in making her trip
19 arrangements. She corresponded with the Lisbon hotel to plan her stay on the MusiCares email
20 system, using her work computer. She also discussed blackout dates, the additional restrictions,
21 and other logistical details with the hotel in front of her staff while she was at the office. Ms.
22 Tomarken's staff was also fully aware that she took the trip to Lisbon because she stayed in close
23 contact with them throughout her stay. She worked during most of the trip, as this was when she
24 was trying to salvage the Person of the Year event in New York.

25 47. Most significantly, Ms. Tomarken's 25-year record demonstrated her good faith in
26 making the pledge and intending to pay for it: In her entire career at MusiCares, she had never
27 before been disciplined by the Academy or MusiCares for any wrongdoing, including any kind of
28 financial wrongdoing. She had also never before been late on any kind of payment due to

1 MusiCares or the Academy. Ms. Tomarken's record amply demonstrated her belief in and
2 dedication to MusiCares' mission and belied any nefarious intent.

3 48. After meeting with Ms. Tomarken, Mr. Frizzi and his human resources colleague
4 summoned Ms. Kalev to discuss the hotel certificate. Ms. Kalev was not surprised to be
5 summoned because Ms. Tomarken had told her that she (Ms. Tomarken) had told Mr. Frizzi and
6 his colleague that Ms. Kalev could provide additional information about practices related to
7 unsold auction items. Though Ms. Tomarken was concerned about Mr. Frizzi's treatment of and
8 tone toward her, neither Ms. Tomarken nor Ms. Kalev suspected then that Mr. Frizzi was seeking
9 to escalate the matter into something that would threaten both their careers. Ms. Kalev met with
10 Mr. Frizzi and his colleague, as requested, and was again immediately taken aback by Mr.
11 Frizzi's hostility and negativity toward Ms. Tomarken.

12 49. The next morning, Ms. Kalev met privately with Mr. Frizzi's colleague to tell her
13 that she wanted to talk to her only and not Mr. Frizzi. Ms. Kalev explained that she did not
14 understand Mr. Frizzi's hostility toward Ms. Tomarken and did not trust his intentions. She
15 described her earlier phone call with Mr. Frizzi in which he ranted about Ms. Tomarken and said
16 she did not feel safe or comfortable around him because of his inexplicable hostility toward Ms.
17 Tomarken. After briefly addressing the seemingly innocuous matter of the hotel certificate with
18 Mr. Frizzi's colleague, Ms. Kalev again broached the topic of her concerns about Mr. Thorson.
19 She told Mr. Frizzi's colleague that Mr. Thorson's behavior had only worsened since she
20 complained about him to business affairs the year before, and that the women in her department
21 found it extremely difficult to work with him. Mr. Frizzi's colleague asked Ms. Kalev if she
22 believed Mr. Thorson's mistreatment of the women in her department was due to their gender and
23 Ms. Kalev said yes, absolutely.

24 50. A few days later, Mr. Frizzi told Ms. Tomarken and Ms. Kalev that an attorney and
25 an accountant were coming in to interview each of them separately about the unsold auction item
26 process. Neither Ms. Tomarken nor Ms. Kalev believed she had any reason to be concerned
27 because the implication was that this was all simply part of an effort to better understand how
28 MusiCares sought to monetize unsold auction items. It soon became clear, however, that the

1 purpose of the meeting had been misrepresented to them. Each went into the meeting and was
2 stunned to find herself subjected by two attorneys to a barrage of questions suggestive of an
3 interrogation, such as, did she lie or did she destroy paperwork to cover up wrongdoing? Ms.
4 Tomarken also immediately noticed when she walked in the meeting that the two attorneys
5 carried folders visibly marked "Investigation." The attorneys directed questions to Ms. Kalev
6 about unsold auction items in a manner that suggested there was the belief that she too had
7 misused them. Stunned and caught completely off guard, Ms. Kalev answered the questions as
8 well as she could, knowing that she had never lied or stolen anything from MusiCares.

9 51. Soon after the meeting, Ms. Tomarken and Ms. Kalev were both notified that they
10 were suspended. Both women were told on the phone that they could not come on the premises
11 even to collect their belongings. On information and belief, the locks to their offices were also
12 changed and Academy and MusiCares staff were forbidden from contacting the women or from
13 providing their contact information to anyone who requested it.

14 52. Two weeks later, on April 16, 2018, Ms. Tomarken and her colleague, who had
15 worked for MusiCares since 1999, were both notified that they were terminated. The alleged
16 grounds for termination were that they had misappropriated property and misrepresented facts
17 during the course of the investigation. Ms. Tomarken and her colleague later learned that the
18 "external auditor" used by Mr. Frizzi in the investigation of the unsold auction items was Todd
19 Thorson, the same person Ms. Kalev had repeatedly complained about.

20 53. Ms. Tomarken also later learned that the MusiCares board had not been consulted
21 or even notified in advance about her termination. Both Mr. Portnow and Mr. Frizzi knew that
22 Ms. Tomarken had the confidence of the MusiCares board. Notifying the board after the fact of
23 her termination allowed Mr. Portnow and Mr. Frizzi to proceed without the board's input (and
24 possible objections) and to control the narrative presented to the board regarding the underlying
25 facts.

26 54. Upon learning of her termination, members of the music community went on the
27 record publicly praising her. She was called:

28 --"professional, proactive, very thoughtful and sensitive about how MusiCares

1 presented the artist;”

2 -- “an outstanding collaborator – honest, thorough, hard working, intelligent and deeply
3 dedicated to MusiCares;” and

4 -- “the key to making [Person of the Year] an absolutely great night.”

5 55. Meanwhile, Mr. Portnow was now free to meet with the MusiCares board to
6 discuss its finances and to set a date for the annual board meeting because he knew that Ms.
7 Tomarken would not be present to report his failure to act in the best interest of MusiCares and
8 refrain from abusing his position of trust within the organization. In Ms. Tomarken’s absence, he
9 could also avoid discussing his failure to disclose his conflict of interests, and his failure to consult
10 with the MusiCares board before agreeing to compromise the success of its annual signature
11 fundraising event and before nearly allowing MusiCares to reduce needlessly its aid to clients.

12 56. By terminating Ms. Kalev, Mr. Portnow, Mr. Frizzi and Mr. Thorson also rid
13 themselves of another witness to Mr. Portnow’s misconduct, as well as a vocal critic of the hostile
14 and discriminatory culture against women at MusiCares and the Recording Academy.

15 57. During the entire course of the Academy’s investigation, Mr. Portnow never once
16 reached out to Ms. Tomarken, even though she was his direct report and they had always had a
17 close working relationship, or allowed her an opportunity to set the record straight. After 15 years
18 of working together, he of all people knew that Ms. Tomarken would never have risked the
19 reputation and career she had worked so hard to build for something as fleeting as a stay in
20 Lisbon. Instead he stood silently by as his loyalist Mr. Frizzi attacked Ms. Tomarken’s credibility,
21 humiliated her and left her, at 74 years old, without a job and, most importantly, her good name.

22 58. Before Ms. Tomarken was suspended, she came up with the idea for MusiCares to
23 select musical artist Dolly Parton as the 2019 Person of the Year. Ms. Tomarken presented her
24 idea to the MusiCares board and received its support. She then approached Ms. Parton’s
25 management team and arranged a meeting in Los Angeles. When Ms. Parton’s team flew out from
26 Nashville to meet Ms. Tomarken, however, Mr. Portnow blocked her from attending the meeting
27 on the ground that she was suspended. Instead he stepped in and, as a final blow to Ms. Tomarken,
28 took credit for her idea to select Dolly Parton as the honoree at the next Person of the Year. Mr.

1 Portnow called Ms. Parton's selection "a personal triumph for me" and attributed no credit to Ms.
2 Tomarken

3 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

4 59. Plaintiff exhausted her administrative remedies by filing a complaint against each
5 of the named Defendants herein with the California Department of Fair Employment and Housing
6 (hereinafter "DFEH") within one year from the date of Defendants' last adverse employment
7 action, and thereafter receiving "Right-to-Sue" letters from the DFEH on or about February 6,
8 2019.

9 **FIRST CAUSE OF ACTION**

10 **VIOLATION OF CALIFORNIA LABOR CODE SECTION 1102.5**

11 (As Against All Defendants)

12 60. Plaintiff repeats and repleads and incorporates by this reference, paragraphs 1
13 through 59 inclusive, above, as though fully set forth herein.

14 61. California Labor Code Section 1102.5 prohibits retaliation by an employer against
15 an employee for disclosing, or because the employer believes the employee may disclose,
16 information to a government or law enforcement agency, to a person with authority over the
17 employee, or another employee who has the authority to investigate, discover, or correct the
18 violation or noncompliance, if the employee has reason to believe that the information discloses a
19 violation of state or federal statute, or a violation of or noncompliance with a local, state, or
20 federal rule or regulation.

21 62. Defendants terminated Ms. Tomarken's employment in substantial part because
22 they believed that she had disclosed, or feared she may disclose, information to a government or
23 law enforcement agency, to a person with authority over the employee, or to another employee
24 who has the authority to investigate, discover, or correct the violation or noncompliance, based on
25 her reasonable belief that the information disclosed a violation of state or federal statute, or a
26 violation of or noncompliance with a local, state, or federal rule or regulation. Specifically,
27 Defendants terminated Ms. Tomarken's employment in substantial part because they believed she
28 had disclosed, or feared she may disclose, to members of the MusiCares board of directors, or to

1 any other government or law enforcement agency with jurisdiction over the matter, her reasonable
2 belief that Mr. Portnow had violated his fiduciary duty to MusiCares by subordinating its interests
3 to the Academy's, by failing to disclose the conflict of interest he created in his position as CEO
4 of both the Academy and MusiCares by forcing MusiCares into a position adverse to the Academy
5 and then negotiating on behalf of both entities, and by engaging in additional repeated acts to the
6 detriment of MusiCares in order to promote the Academy's interests and his own personal
7 reputation.

8 63. Defendants are liable for a civil penalty not exceeding Ten Thousand Dollars
9 (\$10,000) for each violation of Labor Code Section 1102.5.

10 64. As a direct and proximate result of the acts of Defendants, as alleged above,
11 Plaintiff has suffered and will continue to suffer economic damages, including lost wages and
12 other compensatory damages in an amount to be ascertained at the time of trial.

13 65. As a further direct and proximate result of the acts of Defendants, as alleged above,
14 Plaintiff has suffered and will continue to suffer mental and emotional distress, including but not
15 limited to humiliation, anxiety, nervousness, and depression and has been generally damaged in an
16 amount to be ascertained at the time of trial.

17 66. As a direct and proximate result of the acts of Defendants, as alleged above,
18 Plaintiff has necessarily incurred and will continue to incur attorneys' fees and costs in an amount
19 to be proven at the time of trial. Pursuant to the provisions of Code of Civil Procedure Section
20 1021.5, or any other provision allowed by law, Plaintiff is entitled to the reasonable value of such
21 attorneys' fees and costs.

22 67. The above-described acts of Defendants, and each of them, which were carried out
23 by managing agents were willful, intentional, and carried out in conscious disregard of the rights
24 and safety of Plaintiff as well as members of the public. As such, in committing the above-
25 described acts, Defendants acted with malice and with the intent to vex, injure and annoy Plaintiff,
26 thereby warranting the imposition of exemplary and punitive damages in an amount sufficient to
27 punish said Defendants and to deter others from engaging in similar conduct.

28

(As Against All Defendants)

71. Defendants' termination of Ms. Tomarken was contrary to the public policy embodied by Labor Code Section 1102.5, subdivision (b), which prohibits employer retaliation against an employee who reports a reasonably suspected violation of the law to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance. Section

1 1102.5 reflects the broad public policy interest in encouraging workplace “whistleblowers,” who
2 may without fear of retaliation report concerns regarding an employer’s illegal conduct.

3 72. Defendants’ termination of Ms. Tomarken violated fundamental principles of
4 public policy of protecting whistleblowers as described above and as codified in Labor Code
5 Section 1102.5.

6 73. Defendants’ conduct, as described hereinabove, also violated the policy of the State
7 of California, as evidenced by the enactment of FEHA (Govt. Code Section 12940, *et seq.*)
8 Specifically, Defendants terminated Ms. Tomarken on the basis of her age and gender and
9 subjected her to discriminatory treatment and comments. Defendants were aware of the
10 discriminatory conduct, including but not limited to Ms. Kalev’s complaints to Defendants. Yet,
11 Defendants permitted the discriminatory conduct to continue without taking any proper steps to
12 prevent further discrimination in the workplace against Ms. Tomarken and other female
13 employees. Defendants ultimately engaged in unlawful conduct in violation of FEHA and public
14 policy by discriminating against Ms. Tomarken on the basis of her age and gender and by
15 terminating her employment based on Defendants’ discriminatory motives.

16 74. As a direct and proximate result of Defendants’ unlawful conduct which culminated
17 in her termination, Ms. Tomarken has suffered harm, including lost earnings, lost future earnings,
18 and other employment benefits, and humiliation, embarrassment, and mental anguish. Ms.
19 Tomarken is therefore entitled to general and compensatory damages in an amount according to
20 proof at trial.

21 75. Defendants’ actions described herein were done with a conscious disregard for the
22 rights of Ms. Tomarken and with the intent to vex, injure, and annoy Ms. Tomarken such as to
23 constitute oppression, fraud or malice under California Civil Code Section 3294 and to entitle Ms.
24 Tomarken to punitive damages in an amount appropriate to punish or set an example of
25 Defendants.

1 **THIRD CAUSE OF ACTION**

2 **DISCRIMINATION BASED ON SEX IN VIOLATION OF FEHA**

3 **[Govt. Code Section 12940 *et seq.*]**

4 (As Against All Defendants)

5 76. Plaintiff repeats and repleads and incorporates by this reference, paragraphs 1
6 through 75 inclusive, above, as though fully set forth herein.

7 77. Defendants Recording Academy, MusiCares, and the Grammy Foundation, and
8 Does 1-10, inclusive, and each of them are employers subject to California Government Code
9 Section 21940.

10 78. The California Fair Employment and Housing Act (“FEHA”) prohibits an
11 employer from taking adverse employment actions against a protected individual based on her sex.
12 Adverse employment actions include, without limitation, discharging from employment, refusing
13 to transfer/promote, refusing to hire, and discriminating in compensation, terms and conditions or
14 privileges of employment. “Sex” includes, but is not limited to, a person’s gender. Govt. Code
15 Section 12926(r).

16 79. Plaintiff began working for Defendants on July 15, 1993, and was working as vice
17 president, MusiCares/Grammy Foundation, at the time of her termination. Plaintiff was qualified
18 for this position. Throughout her employment, Plaintiff was directly supervised by Recording
19 Academy and MusiCares chief executive officer and president Neil Portnow.

20 80. Defendants’ discriminatory practices against its female employees are evidenced in
21 part by its hiring practices and promotion opportunities. Despite Ms. Tomarken’s repeated
22 requests to Mr. Portnow for a promotion, he refused to promote her to senior vice president or a
23 chief executive position. As compared to men, very few women in the history of MusiCares and
24 the Recording Academy were promoted to the position of senior vice president and only one
25 woman had ever been promoted to a chief executive position. Every other chief executive position
26 had always been held by a man.

27 81. Defendants also permitted a sexist culture to exist in the workplace that favored the
28 male employees over the female employees. Mr. Portnow encouraged and/or permitted the

1 existence of a “boys’ club” that allowed the male employees to socialize with Mr. Portnow and
2 garner favoritism in a way that the female employees were not permitted. This sexist culture
3 resulted in women failing to break through the barriers and gain executive positions at the same
4 rate as men.

5 82. Despite Ms. Tomarken’s successful work in her role as vice president since 2003,
6 Mr. Portnow refused to promote Ms. Tomarken to senior vice president and left in her the same
7 position for 15 years. Ms. Tomarken requested a promotion in each of the last three years of her
8 employment, and while Mr. Portnow praised her work and offered no criticism, he still refused to
9 promote her.

10 83. By way of example, in or about 2005, Mr. Portnow attempted to hire a male
11 executive at a higher salary than Ms. Tomarken’s. The MusiCares board blocked his efforts and
12 Mr. Portnow was forced to match Ms. Tomarken’s salary to that of the new male executive.

13 84. Additionally, as discussed above, members of the “boys’ club” demonstrated their
14 discriminatory bias towards the female employees in the fundraising department, including against
15 Ms. Tomarken. The chief of human resources for the Academy Mr. Frizzi displayed open hostility
16 towards Ms. Tomarken, and Mr. Thorson was rude and condescending to the women in the
17 fundraising department. Defendants were aware of the discriminatory conduct through Ms.
18 Kalev’s complaints regarding Mr. Thorson’s conduct. Defendants failed to take any action in
19 response, however, and Mr. Thorson’s hostile and discriminatory conduct continued.

20 85. Ms. Tomarken is informed and believes and thereon alleges that Defendants
21 terminated her employment on the basis of her gender, and that the reason stated was mere pretext.

22 86. The discriminatory actions of Defendants against Ms. Tomarken constitute
23 unlawful discrimination on the basis of sex in violation of FEHA, codified in Government Code
24 Section 12945(a).

25 87. The above-mentioned sex-based discriminatory actions further reveal Defendants’
26 discriminatory attitude about women and their value in the workplace. Upon information and
27 belief, had Ms. Tomarken been a man, Defendants would have treated her with far more respect
28 and promoted her.

1 88. As a proximate result of the acts of Defendants, and each of them, as described
2 above, Plaintiff has suffered and will continue to suffer economic damages, including lost wages,
3 lost benefits, loss of promotional opportunity, and other compensatory damages in an amount to
4 be ascertained at trial.

5 89. As a proximate result of the acts of Defendants, and each of them, Plaintiff suffered
6 and continues to suffer humiliation, emotional and mental distress, anxiety and stress and has been
7 generally damaged in an amount to be ascertained at the time of trial.

8 90. As a direct and proximate result of the conduct of Defendants, and each of them,
9 Plaintiff was forced to incur substantial costs and attorneys' fees. Under Government Code
10 Section 12965(b), Plaintiff is entitled to recover reasonable attorneys' fees according to proof at
11 the time of trial.

12 91. The acts of Defendants, and each of them, were intentional, willful and malicious,
13 carried out by managing agents, and done in conscious disregard of Plaintiff's rights, safety and
14 well being and with the intent to vex, injure and annoy Plaintiff. As such, Plaintiff requests that
15 exemplary and punitive damages be assessed against each of these Defendants in an amount
16 sufficient to punish said Defendants and to deter others from engaging in similar conduct.

17 **FOURTH CAUSE OF ACTION**

18 **DISCRIMINATION BASED ON AGE IN VIOLATION OF FEHA**

19 **[Govt. Code Section 12940 *et seq.*]**

20 (As Against All Defendants)

21 92. Plaintiff repeats and repleads and incorporates by this reference, paragraphs 1
22 through 91 inclusive, above, as though fully set forth herein.

23 93. Defendants Recording Academy, MusiCares, and the Grammy Foundation, and
24 Does 1 through 10 are "employers" within the meaning of California Govt. Code §12940,
25 commonly known as the Fair Employment and Housing Act ("FEHA"), in that Defendants
26 regularly employed five or more individuals at all relevant times, and that Plaintiff was a covered
27 employee within the meaning of the FEHA.

1 94. Pursuant to Government Code Section 12940(a), it is an unlawful employment
2 practice, unless based upon a bona fide occupational qualification, or, except where based upon
3 applicable securities regulations established by the United States or the State of California, for an
4 employer, because of age, to discharge the person from employment or to discriminate against the
5 person in compensation or in terms, conditions, or privileges of employment.

6 95. Pursuant to Title 2 of the Code of Regulations Section 7295.0(a), it is the purpose
7 of the law prohibiting age discrimination in employment to guarantee all protected individuals
8 aged forty or over employment opportunities commensurate with their abilities. The regulations
9 were promulgated “to assure that employment opportunities for those protected persons over the
10 age of forty are based upon their abilities and are not conditioned upon age-based stereotypes and
11 unsupported generalizations about their qualifications or job performance.”

12 96. Plaintiff is 75-years-old and was continuously employed by Defendants Recording
13 Academy, MusiCares, and the Grammy Foundation for over 25 years until April 16, 2018.

14 97. From the date of when Plaintiff was hired through the date of her termination,
15 Plaintiff performed competently and capably. At the time of her termination, Plaintiff held the
16 position of vice president, MusiCares/Grammy Foundation.

17 98. During the last few years of her employment, Defendants’ staff became
18 increasingly younger. Defendants’ staff consisted largely of supervisors in their fifties and
19 younger, who subjected Plaintiff and other older employees to a pattern and practice of
20 discrimination based on their age.

21 99. Defendants promoted, encouraged and/or condoned the practices and policies of its
22 management team that favored the younger employees while targeting the older employees,
23 including Plaintiff, and treated Plaintiff less favorably than other similarly situated employees
24 outside her protected class.

25 100. Defendants’ discriminatory conduct against Plaintiff based on her age included, but
26 was not limited to, the following:

- 27 a. Mr. Portnow’s refusal to promote Ms. Tomarken for 15 years, despite her
28 successful work and praise for her performance;

- 1 b. During Ms. Tomarken's 2017 performance review, Mr. Portnow made
2 reference to Ms. Tomarken's age and asked about her plans, referring to
3 retirement. Ms. Tomarken responded that she had no plans to retire at that
4 time, and Mr. Portnow told her that she would receive a retirement package
5 and recognition when she made the decision;
- 6 c. Mr. Frizzi made discriminatory and demeaning comments regarding Ms.
7 Tomarken, including: "It's unfortunate that Dana can't hear;" "It's
8 unfortunate that Dana can't comprehend a conversation;" "It's unfortunate
9 that Dana can't follow directions;" "It's unfortunate that Dana doesn't pay
10 attention;" and "It's really unfortunate that Dana can't manage these simple
11 tasks."

12 101. The ageist comments demonstrate Defendants' discriminatory conduct against its
13 older employees, including Ms. Tomarken.

14 102. On or about April 16, 2018, Plaintiff was terminated from her employment with
15 Defendants.

16 103. The true reason for Plaintiff's termination was and is her age and Defendants'
17 proffered reason for terminating Plaintiff was a mere pretext for unlawful age discrimination.

18 104. Plaintiff's age was a substantial motivating factor in the termination of Plaintiff in
19 violation of FEHA, specifically, Government Code Section 12940(a).

20 105. Upon information and belief, Plaintiff was replaced by Defendants with a
21 substantially younger worker.

22 106. Furthermore, Defendants at all time maintained and continue to maintain a pattern,
23 practice, policy and procedure of systematically discriminating against employees on the basis of
24 age. The systematic discrimination based on age is evidenced in Defendants' hiring and
25 terminating practices: statistical evidence indicated that Defendants consistently choose to
26 terminate its older employees and hire younger employees in a discriminatory manner. The
27 pattern, practice, policy and procedure of discrimination are ongoing.

107. Defendants engaged in an unlawful employment practice under Government Code Section 12940(a) by terminating Plaintiff, which was a substantial factor in causing Plaintiff's harm.

108. As a direct and proximate result of the acts of Defendants, and each of them, as alleged above, Plaintiff has incurred compensatory damages, including lost earnings and other economic damages, and has necessarily expended sums in the treatment of physical and mental injuries, in an amount to be ascertained at the time of trial.

109. As a direct and proximate result of the acts of Defendants, and each of them, as alleged above, Plaintiff will necessarily continue to expend sums in the future for the treatment of the emotional and mental injuries sustained by Plaintiff as a result of said Defendants' acts in an amount to be ascertained at the time of trial.

110. As a direct and proximate result of the acts of Defendants, and each of them, as alleged above, Plaintiff has suffered humiliation, mental and emotional distress, anxiety, and nervousness and has been generally damaged in an amount to be ascertained at the time of trial.

111. As a direct and proximate result of the acts of Defendants, as alleged above, Plaintiff has necessarily incurred and will continue to incur attorneys' fees and costs in an amount to be proven at the time of trial. Pursuant to the provisions of Government Code Section 12965(b), Plaintiff is entitled to the reasonable value of such attorneys' fees and costs.

112. The above-described acts of Defendants, and each of them, were willful, intentional and malicious and done with the intent to vex, injure and annoy Plaintiff and warrant the imposition of exemplary and punitive damages in an amount sufficient to punish said Defendants and to deter others from engaging in similar conduct.

FIFTH CAUSE OF ACTION

UNLAWFUL RETALIATION IN VIOLATION OF FEHA

[Govt. Code Section 129409(h)]

(As Against All Defendants)

113. Plaintiff repeats and repleads and incorporates by this reference, paragraphs 1 through 112 inclusive, above, as though fully set forth herein.

1 114. California Government Code Section 12940(h) prevents an employer from
2 retaliating against an employee who complains and/or opposes any discrimination or harassment
3 under FEHA or for exercising her rights under FEHA.

4 115. Ms. Tomarken opposed and protested what she reasonably believed to be unlawful
5 discrimination and retaliation against her by Defendants. Plaintiff opposed the discrimination by
6 repeatedly requesting a promotion and by raising complaints of a pay differential as compared to
7 her male colleagues. Defendants were further aware of the sexist and biased atmosphere following
8 the complaints made by Ms. Kalev.

9 116. Rather than remedy the discriminatory practices, Defendants retaliated against
10 Plaintiff, prevented her from working in an environment free of discrimination and retaliation, and
11 ultimately took adverse employment action against Plaintiff, namely termination.

12 117. Ms. Tomarken's opposition to discrimination was a motivating reason for
13 Defendants' decision to terminate Plaintiff.

14 118. Defendants, and each of them, failed to take any remedial action, refused to
15 investigate the complaints of discrimination and failed to protect Ms. Tomarken and other
16 similarly situated employees from retaliation, including termination.

17 119. Defendants' conduct, as described above, constituted adverse employment actions,
18 which Plaintiff suffered because she exercised her rights under FEHA. As such, the adverse
19 employment actions taken by Defendants materially affected the terms, conditions, and/or
20 privileges of Plaintiff's employment, and constitutes unlawful retaliation in violation of FEHA
21 under Government Code Section 12940(h).

22 120. As a direct and proximate result of the acts of Defendants, and each of them, as
23 alleged above, Plaintiff has suffered and will continue to suffer economic damages, including lost
24 wages and other compensatory damages in an amount to be ascertained at the time of trial.

25 121. As a further direct and proximate result of the acts of Defendants, and each of
26 them, as alleged above, Plaintiff has suffered and will continue to suffer mental and emotional
27 distress, including but not limited to humiliation, anxiety, nervousness, and depression and have
28 been generally damaged in an amount to be ascertained at the time of trial.

1 122. As a direct and proximate result of the acts of Defendants, as alleged above,
2 Plaintiff has necessarily incurred and will continue to incur attorneys' fees and costs in an amount
3 to be proven at the time of trial. Pursuant to the provisions of Government Code Section 12965(b),
4 Plaintiff is entitled to the reasonable value of such attorneys' fees and costs.

5 123. The above-described acts of Defendants, and each of them, which were carried out
6 by managing agents were willful, intentional, and carried out in conscious disregard of the rights
7 and safety of Plaintiff. As such, in committing the above-described acts, Defendants, and each of
8 them, acted with malice and with the intent to vex, injure and annoy Plaintiff, thereby warranting
9 the imposition of exemplary and punitive damages in an amount sufficient to punish said
10 Defendants and to deter others from engaging in similar conduct.

11 **SIXTH CAUSE OF ACTION**

12 **FAILURE TO PREVENT RETALIATION AND DISCRIMINATION**

13 **[Govt. Code Section 12940(k)]**

14 (As Against All Defendants)

15 124. Plaintiff repeats and repleads and incorporates by this reference, paragraphs 1
16 through 123 inclusive, above, as though fully set forth herein.

17 125. Employer Defendants have a statutory duty under Government Code Section
18 12940(k) to take all reasonable steps necessary to prevent discrimination and retaliation from
19 occurring. Such steps include discipline of harassers, training, adopting an anti-harassment, anti-
20 discrimination, and anti-retaliation policy, and implementing those policies.

21 126. Here, as set forth above, Defendants engaged in gender and age discrimination, and
22 ignored the complaints and/or opposition made by Plaintiff and her coworkers. In doing so, said
23 Defendants unlawfully ignored their duty to prevent discrimination and retaliation, and instead
24 condoned and encouraged such unlawful conduct.

25 127. As a proximate result of the acts of said Defendants, and each of them, as described
26 above, Plaintiff has suffered and will continue to suffer economic damages, including lost wages,
27 lost benefits, loss of promotional opportunity, and other compensatory damages in an amount to
28 be ascertained at the time of trial.

128. As a proximate result of the acts of said Defendants, and each of them, Plaintiff suffered and continues to suffer humiliation, emotional and mental distress, anxiety, nervousness, stress and has been generally damaged in an amount to be ascertained at the time of trial.

129. As a direct and proximate result of the conduct of said Defendants, and each of them, Plaintiff was forced to incur substantial costs and attorneys' fees. Under Government. Code Section 12965(b), Plaintiff is entitled to recover reasonable attorneys' fees according to proof at the time of trial.

130. The acts of said Defendants, and each of them, which were carried out by managing agents, were intentional, willful and malicious and done in conscious disregard of Plaintiff's rights, safety and well-being and with the intent to vex, injure and annoy Plaintiff, as such Plaintiff requests that exemplary and punitive damages be assessed against each of these Defendants in an amount sufficient to punish said Defendants and to deter others from engaging in similar conduct.

SEVENTH CAUSE OF ACTION

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(As Against All Defendants)

131. Plaintiff repeats and repleads and incorporates by this reference, paragraphs 1 through 130 inclusive, above, as though fully set forth herein.

132. The conduct described above, including the retaliation, gender and age discrimination and wrongful termination, is extreme and outrageous, exceeding the bounds of normalcy tolerated in a civilized society.

133. Defendants' retaliation and termination immediately following Plaintiff's protected complaints as set forth above evidences Defendants' discriminatory and retaliatory motives herein.

134. Defendants subjected Plaintiff to a trumped-up investigation as part of an effort to destroy her credibility, humiliate her, and rid the threat that she posed to Defendants and Mr. Portnow. In furtherance of these efforts to destroy her credibility, humiliate her, and remove her as a threat, Defendants wrongfully terminated Ms. Tomarken by falsely claiming that she lied, committed fraud, and stole property from MusiCares. Defendants' conduct, including Defendants' retaliation against Plaintiff and refusal to address her protected complaints in any way, was

1 outrageous and intended to cause Plaintiff emotional distress. Defendants acted with blatant
2 disregard of Plaintiff's rights and deliberately engaged in outrageous and severe conduct intended
3 to cause Plaintiff emotional distress.

4 135. Defendants knew or should have known that their retaliatory and discriminatory
5 conduct would cause Plaintiff to suffer emotional distress, and leave her without her employment
6 and her income from Defendants to support herself and her family, as well as negatively impact
7 her career, her reputation and future job opportunities. Defendants nevertheless retaliated against
8 Plaintiff by subjecting her to a trumped-up investigation, false charges and wrongful termination
9 on false grounds, all in conscious disregard of the likelihood that such conduct would cause her
10 severe emotional distress.

11 136. As a proximate result of the acts of Defendants, and each of them, as described
12 above, Plaintiff suffered economic damages, including lost wages and benefits, and other
13 compensatory damages in an amount to be ascertained at the time of trial.

14 137. As a further proximate result of the acts of Defendants, and each of them, as
15 alleged above, Plaintiff has suffered severe emotional and mental distress and has necessarily
16 expended sums in the treatment of such injuries, all to Plaintiff's damage in an amount to be
17 ascertained at the time of trial.

18 138. As a further proximate result of the acts of Defendants, and each of them, as
19 alleged above, Plaintiff will necessarily continue to expend sums in the future for the treatment of
20 the emotional and mental injuries sustained by Plaintiff as a result of said Defendants' acts in an
21 amount to be ascertained at the time of trial.

22 139. The above-described acts of Defendants, and each of them, which were carried out
23 by managing agents, were intentional, willful and malicious and done in conscious disregard of
24 Plaintiff's rights, safety and well-being and with the intent to vex, injure and annoy Plaintiff. As
25 such, Plaintiff requests that exemplary and punitive damages be assessed against each of these
26 Defendants in an amount sufficient to punish said Defendants and to deter others from engaging in
27 similar conduct.

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ON THE SEVENTH CAUSE OF ACTION

1. For compensatory damages against Defendants according to proof;
2. For special damages against Defendants according to proof;
3. For general damages against Defendants according to proof;
4. For exemplary and punitive damages according to proof;
5. For costs of suit incurred herein; and
6. For such other and further relief as the court deems just and proper.

DATED: February 11, 2019

CHRISTINE ADAMS LAW, APC

By 

Christine M. Adams
Attorneys for Plaintiff
DANA J. TOMARKEN

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of the causes of action and claims asserted herein.

DATED: February 11, 2019

CHRISTINE ADAMS LAW, APC

By 

Christine M. Adams
Attorneys for Plaintiff
DANA J. TOMARKEN